

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

FEB 26 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

CHERYL KATER, individually and on  
behalf of all others similarly situated; SUZIE  
KELLY, individually and on behalf of all  
other similarly situated,

Plaintiffs-Appellants,

v.

CHURCHILL DOWNS, INC., a Kentucky  
corporation; BIG FISH GAMES, INC., a  
Washington corporation,

Defendants-Appellees.

No. 19-36091

D.C. No. 2:15-cv-00612-RBL  
Western District of Washington,  
Seattle

ORDER

CHERYL KATER, individually and on  
behalf of all others similarly situated; SUZIE  
KELLY, individually and on behalf of all  
other similarly situated,

Plaintiffs-Appellees,

v.

CHURCHILL DOWNS, INC., a Kentucky  
corporation; BIG FISH GAMES, INC., a  
Washington corporation,

Defendants-Appellants.

No. 20-35042

D.C. No. 2:15-cv-00612-RBL

Before: CANBY, GOULD, and WATFORD, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over

these appeals because the orders challenged in the appeals are not appealable under 28 U.S.C. § 1292(a)(1). *See Gon v. First State Ins. Co.*, 871 F.2d 863, 865 (9th Cir. 1989) (“an order by a court that regulates the conduct of the litigation . . . is not considered an injunction for purposes of appellate jurisdiction.”); *see also* Fed. R. Civ. P. 23(d) (in conducting a class action the district court may issue orders governing notice provided to class members); *Wang v. Chinese Daily News, Inc.*, 623 F.3d 743, 756 (9th Cir. 2010) (“Rule 23(d) gives district courts the power to regulate the notice and opt-out processes and to impose limitations when a party engages in behavior that threatens the fairness of the litigation”), *vacated on other grounds*, 565 U.S. 801 (2011). Consequently, these appeals are dismissed for lack of jurisdiction.

**DISMISSED.**